

Office of the Acquisition Management
U.S. Department of Homeland Security
801 I Street, NW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

Pursuant to the requirements of 41 U.S.C. §§ 3301-3311, Competition in Contracting Act of 1984 (CICA) as implemented by FAR Subpart 6.3, and IAW the requirements of FAR Subpart 6.303-1, the justification for the use of the statutory authority under FAR Subpart 6.3 is justified by the following facts and rationale required under FAR Subpart 6.302-2 as follows:

1. Agency and Contracting Activity

The U.S. Department of Homeland Security (DHS)/Immigration and Customs Enforcement (ICE) Office of Acquisitions Management (OAQ)/Detention Management Division (DM), proposes to immediately acquire on-site medical staffing support services under other than full and open competitive procedures utilizing the exception specified under FAR Subpart 6.302-2 “Unusual and Compelling Urgency”.

2. Nature and/or Description of the Action Being Approved

DHS ICE has an immediate, unusual and compelling requirement for four (4) Registered Nurse (RN) positions at ICE’s Stewart Detention Center in Georgia and two (2) RN positions at ICE’s Berks County Detention Facility in Pennsylvania for a period of 120 days.

The government seeks to acquire the required services from Maxim Healthcare Services, Inc. located at 7277 Lee Deforest Drive, Columbia, MD 21046.

3. Description of Supplies/Services

ICE urgently requires on-site medical staffing support services (Registered Nurses) at its Stewart Detention Center and its Berks County Detention Facility in order to sustain the provision of the full continuum of health care services to ICE residents 24 hours a day, seven (7) days a week, 365 days per year as required under 42 U.S.C. § 249 - Medical care and treatment of quarantined and detained persons. The required nurses will be responsible for providing direct nursing care to detainees.

4. Identification of Statutory Authority Permitting Other Than Full and Open Competition

The statutory authority permitting other than full and open competition under these circumstances is 41 U.S.C. 3304 (a)(2) implemented by FAR Subpart 6.302-2 entitled “Unusual and Compelling Urgency.”

5. Demonstration that the Contractor's Unique Qualifications or the Nature of the Acquisition Requires the Use of the Authority Cited

The use of this authority is necessary because the above listed locations are in critical need of RN services to ensure on-going patient safety and successful accomplishment of the ICE mission. Currently, the Government is experiencing a critical shortage of Public Health Service (PHS) Officers at Stewart Detention Center in Georgia and Berks County Detention Center in Pennsylvania.

Presently, ICE's Stewart Detention Center and Berks County Detention Center are in critical need of RN staffing to sustain operations at each site. Each ICE detention facility must sustain a minimum number of RNs based on the detainee population housed in that facility and a number of other mission-related factors. Nursing staff is required to provide healthcare services necessary to detain the population. ICE relies on Public Health Service officers and contractor provided medical staff to meet its staffing requirements. Currently, ICE must sustain a minimum of 11 RNs (2 PHS and [REDACTED] Contractor) at Berks and a minimum of 30 RNs (5 PHS and [REDACTED] CTR) at Stewart. At the Stewart Detention Center, which houses an average population of 1,850 detainees, only 1 of 5 Public Health Service positions is currently occupied (20% fill rate). Combined contractor/PHS staffing level for RNs is [REDACTED]. At the Berks County Detention Center, which houses an average population of 84 detainees, 0 of 2 Public Health Service positions are currently occupied (0% fill rate). Staffing levels for both contractor and PHS is [REDACTED]. In order to meet minimum nursing staff requirements, ICE urgently needs to fill four (4) RN positions at the Stewart Detention Center and two (2) RN positions at the Berks County Detention Facility for a period of 120 days.

ICE's failure to sustain minimum RN staffing levels will require healthcare services to be reduced at each facility; endangering detainee and non-detainee safety, disrupting detention operations at both facilities, causing unnecessary evacuation of detainees in order to bring the healthcare provider ratio into compliance, and significantly degrading and disrupting ICE's capability to carry out its detention mission, all at great cost and administrative effort. Failure to fill these services at both sites will cause the sites to shut down, significantly curtail operations, or suspend acceptance of detainees due to inadequate medical staffing. As a result, ICE will have to incur significant unplanned expenses to relocate detainees to other detention facilities, reducing overall available bed-space at a time when ICE requires every available bed to accommodate the surge of immigrants crossing into the United States along the Southwest border.

The Government has attempted to recruit and fill its PHS positions but has been unable to do so. PHS only opens the boards to review and hire new candidates once a year for nursing. If a PHS nurse were to be hired in 2017, the process for onboarding takes approximately 11 months. Given the lengthy process of onboarding new PHS officers, the Government does not anticipate being able to fill its vacant PHS positions within the timeframe needed to sustain its operations at these facilities. ICE will continue to recruit within the Federal Government and the general public to fulfill the PHS positions. ICE is currently maximizing overtime and Temporary Duty (TDY) assignments for current Public Health Service Officers within IHSC to backfill the vacancies at Berks and Stewart.

Thus ICE needs to obtain alternate contractor services to fill the vacant PHS positions on a temporary basis; until ICE is able to fill its PHS vacancies with newly hired or transferred PHS Officers.

Medical staffing support at both sites is currently provided under contract HSCECR-12-F-00048 by InGenesis, Inc. [REDACTED]

[REDACTED] the Government has no expectation that InGenesis is able to support backfilling the government's vacancies.

Maxim Healthcare Services is the only contractor that can provide the required medical staffing support in the required timeframe to continue uninterrupted operations at both sites. Maxim is the only contractor with the infrastructure, experience, and current contract vehicle with similar performance requirements in place to meet the government's immediate needs. Maxim has proven its ability to staff other high-profile, sensitive, and hard-to-fill IHSC locations; [REDACTED]

No other contractor has an infrastructure with trained and cleared personnel already in-place to fill the government's urgent requirement.

Given the criticality of nursing positions, both Federal and contractor, at the Stewart Detention Center and Berks County Detention Center, the Government requires four (4) RNs positions at Stewart and two (2) RN positions at Berks for a 120-day period. ICE proposes to acquire these services by adding these positions at the aforementioned facilities to Maxim's medical staffing support contract, HSCEDM-15-C-00004, under the authority in HSAR 3052.215-70(a) as set forth in the contract. Maxim will perform to the same standards put forth in the Statement of Work for HSCEDM-15-C-00004. The existing Maxim contract is the only option that can meet the government's immediate and urgent requirement for nursing staff. Once awarded, a new contractor would require an additional sixty (60) day ramp-up period to establish interfacing for recruitment, credentialing, and training of staff based on IHSC RN position description requirements. ICE operations will be negatively impacted if it further delays filling these vacancies by the amount of time it would take to solicit competitive offers to perform this work.

The 120 days will allow the Government to continue recruiting to onboard a Federal Registered Nurse. The 120 days consists of time needed for a new PHS applicant to transfer from another agency, 30 days to notify the current Maxim employee that the position is no longer available, and 30 days to account for unforeseen events that may delay continuous operations. Award to any other source would result in unacceptable delays in filling the Agency's urgent requirement.

6. Efforts to Obtain Competition.

Due to the limited scope and short period of performance for this effort, it is not practicable for another vendor to provide these services under a new contract. The proposed acquisition covers four (4) RNs for Stewart Detention Center in Georgia and two (2) RN positions at Berks County Detention Facility in Pennsylvania for a temporary period of 120 days. The government does not expect that it would receive any competitive offers considering the limited scope and duration of the urgent requirement. Further, a requirement for all IHSC medical staffing support is currently in the process of being recompeted. Solicitation HSCECDM-16-R-00002 for the follow-on requirement to Contract No. HSCECR-12-F-00048 was issued on a full and open competition basis and is currently closed for evaluation. Award will not be made in time to address this urgent requirement.

7. Determination by the Contracting Officer that the Anticipated Cost to the Government Will be Fair and Reasonable

The following chart details the total cost for providing the required Registered Nurses services from Maxim Healthcare Services, Inc.:

The price to provide these services to the Government for the 120 day period will be determined fair and reasonable based on price analysis, including comparison to previous prices paid under similar medical staffing support contracts prior to contract award. Further details can be found in the fair and reasonableness document for this proposed action.

8. Description of Market Research

After considering the critical staffing shortfalls [REDACTED]

[REDACTED] ICE has determined that only Maxim Health Care Services has the capability to quickly provide RN services to meet ICE's mission and provide medical care in accordance with ICE's standard of care. All other vendors responding to Solicitation HSCEDM-16-R-00002 would require too much transition time to meet this urgent requirement.

9. Any Other Facts Supporting the Use of Other than Full and Open Competition.

Considering the criticality of the nursing positions and operations at all IHSC facilities, the current contract with Maxim Healthcare Services, Inc. is the only mechanism by which the government can immediately obtain the urgently required medical staffing support at these two ICE facilities.

10. A Listing of the Sources, if Any, That Expressed, in Writing, an Interest in the Acquisition.

Since this requirement was not posted in any public forum due to the urgent and compelling nature of this requirement.

11. A Statement of the Actions, if Any, the Agency May Take to Remove or Overcome Any Barriers to Competition Before Any Subsequent Acquisition for Supplies or Services Required.

Since the requirement is urgent and compelling under FAR Subpart 6.302-2, the Government had to take action immediately because any delay of award could result in serious injury as discussed to the Government.

12. Certifications

I certify that the facts and representations under my cognizance, which are included in this justification, meet the Government's minimum need and that the supporting data, which forms a basis for this justification, is complete and accurate.

Requirements/Technical Personnel:

[REDACTED]

Date

Contracting Officer's Representative

Contracting Officer:

I certify that the justification is accurate and complete to the best of my knowledge and belief.

[REDACTED]

[REDACTED]

1/25/17

Date

Contracting Officer